HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. M/S No. 4641/01
Brij Gopal

Vs

Rent Control and
Eviction Officer

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 5.6.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 4641 (MS) OF 2001

(Old No. 36046/95)

Brij Gopal,
S/o Sri Musandi Lal,
R/o H. No. 114, Rajputana West,
Qasba Roorkee, Pargana & Tehsil Roorkee,
District-Haridwar. .....Petitioner.

Versus

1. Rent Control and Eviction Officer,
   Roorkee, District Haridwar.
2. District Judge, Haridwar.
3/1. Arun Kumar Gupta, S/o late Sri Mukandi Lal, R/o 120 Rajputana West, Roorkee Pargana & Tehsil Roorkee, District Haridwar.
4. Mohd. Hanif, S/o Shri Ismail Shop Keeper of Shop No. 53/2-3, Rampur Road, Main Bazar, Roorkee, District-Haridwar. .....Respondents.

Dated: 05.06.2006

Hon'ble Rajesh Tandon, J.

Heard Sri D.C.S. Rawat, Advocate for the petitioner. Inspite of notice, none has turned up on behalf of the respondents.

Petitioner has challenged the orders passed by the Revisional Court dated 20.09.1995 as well as the order dated 18.07.1995 by which the shop in question has been refused to be declared vacant.

Briefly stated, an application was filed by the petitioner for allotment of the premises in his favour on the ground that the occupant namely Mohd. Hanif has been occupying the shop without any allotment order and as such the same is liable to be declared as vacant.

On 7th July, 1995, an inspection was done by the Rent Control and Eviction Officer. A perusal of the order dated 18th July, 1995 shows to the following effect"-

"दुकान रिक्त नहीं है। पत्रावली दाखिल दफ्तर करें।"

The petitioner approached the revisional Court by filing a revision under Section 18 of the U.P. Act No. 13 of 1972. The said revision was dismissed as not maintainable, hence the present writ petition has been filed.

A perusal of the order passed by the Rent Control and Eviction Officer shows that he has neither referred the report of the inspection nor the documents in support of the parties and a cryptic order has been passed.

It is well settled that the Rent Control and Eviction Officer acts as a quasi judicial authority and therefore, he is required to record reasons before passing the order while disposing of the application for declaring the vacancy. The revisional Court has also rejected the same although no revision was maintainable as it was a case of refusal to hold the vacancy.

Since no revision was maintainable, therefore, I treat the writ petition as having been filed against the order dated 18.07.1995 by which the declaration of vacancy has been refused by the Rent Control and Eviction Officer.

Section 34 (7) of the U.P. Act No. 13 of 1972 reads as under:-

"*Section 34(7).-The District Magistrate the Prescribed Authority or the Appellate or Revisional Authorities shall record reasons for every order made under this Act.*"

In the case of ***Adarsh Kumar Jain Vs. Rent Control and Eviction Officer Kashipur, District Nainital and another 1988(2) ARC Page No. 527,*** it has been held as under:-

"The question about determination of vacancy of a quasi judicial authority must conform to the provisions of the act and Rules relating thereto. In Siemens Engineering & Mfg. Co. v. Union of India, AIR1976 SC 1785. The Supreme Court observed as under:

"It is now settled law that when an authority makes an order in exercise of a quasi judicial functions, it mast record its reasons in support of the order it makes. Every quasi judicial order must be supported by reasons……The rule requiring reasons to be given in support of an order is, like the principle of audi alteram, basic principle of natural justice which must inform ever quasi judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

8. As pointed out by the Supreme Court in Union of India v. M.L. Capoor, AIR 1974 SC 87 at page 97 the reasons recorded must not be an apology for reasons, which are required to be recorded by the quasi judicial authority. It was further pointed out that the reasons are links between the material on which certain conclusions are based on the actual conclusions. They disclosed how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi judicial. They should reveal a rational nexus between the facts considered and the conclusion reached only in this way can an opinion or decisions recorded be shown to be manifestly just and reasonable.

9. In Woolcombas of India Ltd Vs. Woolcom Workers Union, AIR 1973 SC 2766, 2761, Dwivedi J. speaking for the Supreme Court, has observed.

"……..Unreased conclusions may be just but they may not appeal to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Third, it should be remembered that an appeal generally lies form the decisions of the judicial and quasi judicial to this Court by special leave granted under Article 136. A judgment which does no disclose the reasons will be of little assistance and find for itself whether the decision in appeal in right or wrong. In many cases this investment of time and of industry will be saved if reasons are given in support of the conclusions."

Since the Rent Control and Eviction Officer has not considered the documents on the record in order to record a finding as to whether the accommodation is vacant or not, the matter is sent back to the Rent Control and Eviction officer for deciding afresh after giving an opportunity to the parties to lead the evidence.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

05.06.2006
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